

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (Text with EEA relevance)

## CHAPTER V

### **PARTICULARS OF THE STANDARD AGREEMENT BETWEEN A DEPOSITARY AND A MANAGEMENT COMPANY**

**(Article 23(5) and Article 33(5) of Directive 2009/65/EC)**

#### *Article 30*

#### **Elements related to the procedures to be followed by the parties to the agreement**

Member States shall require the depositary and the management company, referred to in this Chapter as the ‘parties to the agreement’, to include in the written agreement referred to in either Articles 23(5) or Article 33(5) of Directive 2009/65/EC at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

- (a) a description of the procedures, including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the depositary;
- (b) a description of the procedures to be followed where the management company envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;
- (c) a description of the means and procedures by which the depositary will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;
- (d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;
- (e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;
- (f) a description of the procedures by which the management company can review the performance of the depositary in respect of the depositary’s contractual obligations.

### Article 31

#### **Elements related to the exchange of information and to obligations on confidentiality and money-laundering**

1 Member States shall require parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:

- a a list of all the information that needs to be exchanged between the UCITS, its management company and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;
- b the confidentiality obligations applicable to the parties to the agreement;
- c information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

2 The obligations referred to in paragraph 1(b) shall be drawn up so as not to impair the ability of either the competent authorities of a management company's home Member State or the competent authorities of the UCITS home Member State in gaining access to relevant documents and information.

### Article 32

#### **Elements related to the appointment of third parties**

Where the depositary or the management company envisage appointing third parties to carry out their respective duties, Member States shall require both parties to the agreement referred to either in Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars in that agreement:

- (a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the management company to carry out their respective duties;
- (b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;
- (c) a statement that a depositary's liability as referred to in Article 24 or Article 34 of Directive 2009/65/EC shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

### Article 33

#### **Elements related to potential amendments and the termination of the agreement**

Member States shall require the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars related to amendments and the termination of the agreement in that agreement:

- (a) the period of validity of the agreement;
- (b) the conditions under which the agreement may be amended or terminated;
- (c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary shall send all relevant information to the other depositary.

#### *Article 34*

#### **Applicable law**

Member States shall require the parties to the agreement referred to either in Articles 23(5) or Article 33(5) of Directive 2009/65/EC to specify that the law of the UCITS' home Member State applies to that agreement.

#### *Article 35*

#### **Electronic transmission of information**

In cases where the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC agree to the use of electronic transmission for part or all of information that flows between them, Member States shall require that such agreement contains provisions ensuring that a record is kept of such information.

#### *Article 36*

#### **Scope of the agreement**

Member States may allow that the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC cover more than one UCITS managed by the management company. In such case, the agreement shall list the UCITS covered.

#### *Article 37*

#### **Service level agreement**

Member States shall allow parties to the agreement to either include details of means and procedures referred to in Article 30(c) and (d) in the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC or in a separate written agreement.